

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

METALS USA PLATES AND SHAPES  
NORTHEAST, L.P.

Employer

and

SHOPMEN'S LOCAL UNION NO. 502  
OF THE INTERNATIONAL ASSOCIATION  
OF BRIDGE, STRUCTURAL, ORNAMENTAL  
AND REINFORCING IRON WORKERS,  
AFL-CIO

Case 4-RC-20454

Petitioner

and

SHEET METAL WORKERS' INTERNATIONAL  
ASSOCIATION, LOCAL UNION NO. 19

Intervenor

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

#### 5. *Background*

The Employer is a steel processing and service company that operates three facilities in southeastern Pennsylvania.<sup>1</sup> Two of the facilities are located in Philadelphia, one on Aramingo Avenue (the Aramingo facility) and the other, 11 miles away, on Roosevelt Boulevard (the Boulevard facility). The third facility is in Langhorne, Pennsylvania (the Langhorne facility). In November 2001, the Employer filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code.

The Petitioner seeks to represent a unit of production and maintenance employees and truck drivers at the Aramingo facility. At this facility, the Employer manufactures steel beams and steel plate for use in shipbuilding. Nine employees currently work full time there (the Aramingo employees).

At the Boulevard facility, the Employer manufactures steel plate and steel coil. The Intervenor represents a unit of about 23 production, maintenance, and shipping employees and truck drivers at this facility (the Boulevard employees).

The Petitioner represents employees at the Langhorne facility. At this facility, the Employer manufactures steel beams and plates used in constructing buildings and bridges.<sup>2</sup>

#### *Contentions of the Parties*

The Intervenor asserts that the petition should be dismissed because: (1) there is a “fluctuating workforce” at the Aramingo facility due to anticipated changes in the Employer’s operations, or (2) the petition is barred by its contract with the Employer covering the unit at the Boulevard facility. The Intervenor argues in the alternative that if an election is directed, six employees, who work at both the Boulevard and Aramingo facilities, should be included in the proposed unit as dual-function employees. Finally, the Intervenor contends that maintenance mechanic George Chase, who works at both the Langhorne and Aramingo facilities, should not be included in the proposed Aramingo facility unit.

The Employer would not dismiss the petition but would include the employees who work at both the Aramingo and Boulevard locations in the unit. The Petitioner would exclude these employees. The Employer did not take a position as to Chase. In its brief, the Petitioner takes the position that Chase should be included in the proposed unit if the Boulevard employees who spend the most time at Aramingo are included.

---

<sup>1</sup> The Employer also operates other facilities throughout the United States.

<sup>2</sup> Until October 2001 when it closed, the Employer operated a facility located on Byberry Road in Philadelphia (the Byberry facility). The Byberry facility employees were transferred to the Employer’s Langhorne facility after Byberry was closed.

## ***Facts***

Since November 2001, six of the Boulevard employees have been working part-time at the Aramingo facility operating a recently installed slitter and packaging line. These employees are Jerome Ratchford, Thomas Ratchford, Michael Pacelli, Frank Ferrell, Angel Serrano, and Eugenio Serrano (the Two-Facility employees).<sup>3</sup> During this period, they have continued to work at the Boulevard facility for the vast majority of their working hours. They work at Aramingo primarily on Saturdays, but have also occasionally worked there on Wednesdays and Sundays. The six employees worked a total of about 735 hours at the Aramingo facility during a 22-week period at the beginning of 2002, an average of only about 33 hours per week for all of them. Eugenio Serrano and Angel Serrano have worked more hours at Aramingo than Pacelli, Ferrell, and Jerome Ratchford and Thomas Ratchford. The Two-Facility employees may report to work at either Aramingo or the Boulevard, depending on the circumstances. They work only on the slitter and packaging line at the Aramingo facility, and no other employees operate this equipment.

The Two-Facility employees have varying functions at each location. Jerome Ratchford and Thomas Ratchford work as slitter operators at both the Aramingo and Boulevard facilities. Angel Serrano serves as a set-up employee at Aramingo and as a crane operator at the Boulevard. Eugenio Serrano is an assistant slitter operator at Aramingo and a crane operator at the Boulevard. Frank Ferrell works as a packaging employee at Aramingo and an assistant slitter operator at the Boulevard. Michael Pacelli is a lead employee and packaging employee at both locations. The Two-Facility employees occasionally transport and unload steel sent from the Boulevard facility to the Aramingo facility for use as raw material for the slitter.<sup>4</sup> The other Aramingo facility employees usually unload the steel used in other portions of the Aramingo operation.

The Employer's Operations Manager, Mark A. Zgalich, regularly works at the Boulevard facility but also supervises the Two-Facility employees' work on the slitter and packaging line at Aramingo. Zgalich does not supervise the other Aramingo facility employees, and none of the supervisors based at Aramingo supervise the Two-Facility employees. The Two-Facility employees' terms and conditions of employment are governed by the Employer's collective-bargaining agreement with the Intervenor for the Boulevard facility bargaining unit, even when they work at Aramingo.

On May 16, 2001, in response to an information request, the Employer informed the Intervenor, among other things, that, "by the end of October, 2001, 5 of the 15 production employees and the one maintenance employee at Aramingo will be relocated to Langhorne." Consistent with the letter, during the next few months the Employer transferred about five employees from Aramingo to Langhorne. Zgalich testified that the Employer plans to transfer an unspecified number of other employees from the Aramingo facility to the Langhorne facility, "over the next six months or longer." The May 16, 2001 letter also stated that the six Two-Facility employees would relocate to the Aramingo facility at the end of October 2001 to operate

---

<sup>3</sup> The parties stipulated that none of these individuals are statutory supervisors. A seventh Boulevard employee also began working part-time at Aramingo, but he voluntarily terminated his employment in December 2001.

<sup>4</sup> An Aramingo facility crane operator occasionally assists in unloading trucks carrying metal to be processed on the slitter at Aramingo.

the new slitter and that the remaining production and maintenance employees at the Boulevard facility will be relocated to Langhorne “some time in the next 18 months.”

Zgalich further testified, however, that as a result of its bankruptcy status, the Employer is currently attempting to sell portions of its business, including the Boulevard facility and the slitter and packaging line at the Aramingo facility. The Employer has no plans to sell any other portion of the Aramingo facility. While the Employer’s future plans are uncertain, the Employer intends to operate the portions of its business that are for sale without interruption until they are sold.

The Employer’s business volume has been generally decreasing over the last year, a decline it attributes to the present high price of American steel. In particular, the Employer’s use of the slitter has been declining during the past several months, and the Employer is uncertain how often it will be used in the future. The Aramingo facility slitter is currently welded within concrete foundations and would cost about \$200,000 to move to a different location.

George Chase, a maintenance mechanic, works approximately 20 percent of the time at the Aramingo facility and spends the remainder of his time at the Langhorne facility. When he works at Aramingo, his terms and conditions of employment are governed by the collective-bargaining agreement between the Employer and the Petitioner for the Langhorne facility bargaining unit. He has recently spent less time at Aramingo because he has been increasingly busy working at the Langhorne facility. Chase’s work hours at Aramingo have been variable and unpredictable. While there have been weeks in which he did not work at Aramingo at all, at other times he worked there for the entire week.<sup>5</sup> When Chase works at Aramingo, he is the only hourly employee performing maintenance work, and he is minimally supervised by a maintenance manager.

### *Analysis and Conclusions<sup>6</sup>*

#### *The Intervenor’s Contention that the Petition Should Be Dismissed*

The Intervenor contends that the petition should be dismissed because, in view of the Employer’s anticipated operational changes, the workforce is fluctuating and altering its basic character. This contention is without merit. The Employer’s plans to revamp its operations are far from certain. Thus, although the Employer had planned to relocate the Two-Facility employees to the Aramingo facility and transfer the Aramingo employees to Langhorne, these anticipated changes predated the Employer’s declaration of bankruptcy. Since declaring bankruptcy, the Employer indefinitely delayed its relocation plans and indicated that it will maintain the Aramingo operations for the foreseeable future. Moreover, the Employer is attempting to sell the Aramingo slitter and packaging operation, and if these efforts succeed, the plan to transfer the Two-Facility employees would be affected. In these circumstances, any prediction of the Employer’s future operations is speculative and thus cannot be the basis for dismissing the petition and denying the Aramingo employees an opportunity to express their free

---

<sup>5</sup> He has not worked at Aramingo for an entire week, however, during the last few months.

<sup>6</sup> I take official notice that on September 11, 2002, pursuant to Article XX of the AFL-CIO Constitution, Impartial Umpire Howard Lesnick issued a decision finding, inter alia, that the Petitioner was not presently in violation of the AFL-CIO Constitution by filing the instant petition.

choice in an election. See *Hazard Express*, 324 NLRB 989 (1997); *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976); *Bekaert Steel Wire Corp.*, 189 NLRB 561, 562 (1971). Cf. *K-P Hydraulics Co.*, 219 NLRB 138 (1975).<sup>7</sup>

The Intervenor's contract bar argument is based on two different contentions. First, the Intervenor contends that the Aramingo facility is an accretion to the Boulevard facility, and the Boulevard contract therefore bars the petition. Secondly, the Intervenor contends that when the Employer transfers the Two-Facility employees to Aramingo and other Aramingo employees to the Langhorne facility, the Intervenor will represent a majority of the employees at the Aramingo facility. Neither contention is meritorious.<sup>8</sup>

The Aramingo facility is not an accretion to the Boulevard unit represented by the Intervenor. The Board has followed a restrictive policy in finding accretions to existing units in order to preserve the right of employees to choose their own bargaining representative. *Archer Daniels Midland Co.*, 333 NLRB No. 81, slip op. at 3 (2001); *Towne Ford Sales*, 270 NLRB 311 (1984), *enfd.* 759 F.2d 1477 (9<sup>th</sup> Cir. 1985). The Board will find an accretion only when the additional employees have little or no separate group identity and cannot be considered a separate appropriate unit, or when the additional employees share an overwhelming community of interest with the employees in the unit to which they would be accreted. *United Parcel Service*, 303 NLRB 326, 327 (1991), *enfd.* 17 F. 3d 1518 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1076 (1995); *Safeway Stores, Inc.*, 256 NLRB 918 (1981). The employees in the petitioned-for unit of Aramingo facility employees do not meet this test. The Aramingo employees have minimal interchange with the Two-Facility employees and no interchange with any of the Boulevard employees. The Aramingo facility employees are supervised separately from the Two-Facility employees and the other Boulevard employees. Unlike the Boulevard employees, the Aramingo employees' terms and conditions of employment are not governed by the Intervenor's contract. The Aramingo facility employees do not perform the same work as the Two-Facility employees or the other Boulevard employees. With the exception of George Chase, the Aramingo facility employees work exclusively at Aramingo, a facility located 11 miles from the Boulevard facility. In these circumstances, I find that the Aramingo facility employees have a separate identity and do not share a significant community of interest with the Two-Facility employees, or with any other employees working at the Boulevard and are not an accretion to the unit represented by the Intervenor. *Archer Daniels Midland*, *supra*; *United Parcel Service*, *supra*.

The Intervenor's contention that there will be an accretion and corresponding contract bar once the Employer has effectuated its transfer plans also is without merit. As discussed above, these plans are far from certain and cannot serve as the basis for a present contract bar. Indeed, the Employer is attempting to sell the Boulevard facility, and a successful sale could jeopardize the Intervenor's representative status. Accordingly, the Intervenor's collective-bargaining agreement with the Employer for the Boulevard employees does not bar the instant petition.<sup>9</sup>

---

<sup>7</sup> In this regard, the continuing viability of any certification of representative may be tested in subsequent appropriate proceedings if the new operations materialize. *Baekert Steel Wire Corp.*, *supra*.

<sup>8</sup> In its brief, the Intervenor only made the latter contention when addressing the contract bar issue.

<sup>9</sup> The Intervenor's reliance on *Rock Bottom Stores*, 312 NLRB 400 (1993), *enfd.* 51 F. 3d 366 (2d Cir. 1995), *Gitano Distribution Center*, 308 NLRB 1172 (1992), and *Harte & Co.*, 278 NLRB 947 (1986) is misplaced. Those

### *Eligibility of the Two-Facility Employees*

I will not include the six Two-Facility employees in the unit as dual-function employees. Dual-function employees are eligible for inclusion in a unit where they are regularly employed for sufficient periods of time in unit work to demonstrate a substantial interest in the unit's wages, hours and conditions of employment. *Avco Corp.*, 308 NLRB 1045 (1992); *Berea Publishing Co.*, 140 NLRB 516, 518–519 (1963). The Board has found employees who spend 35 percent of their time on unit work eligible under this test but employees who spend five to 10 percent of their work hours performing unit work ineligible. *Pacific Lincoln-Mercury*, 312 NLRB 901 fn. 4 (1993); *Oxford Chemicals*, 286 NLRB 187 (1987); *Wilson Engraving Company, Inc.*, 252 NLRB 333 (1980). Here, the Two-Facility employees are exclusively performing slitter and packaging work that is distinct from the manufacturing work performed by the Aramingo facility employees, and they spend an average of only five to six hours per week at the Aramingo facility. Moreover, they are precluded from inclusion in the Aramingo unit because they are already covered by the Boulevard contract. See *Davis Supermarkets, Inc.*, 306 NLRB 426, 427-428 (1992), *enfd.* 2 F. 3d 1162 (D.C. Cir. 1993), *Otasco, Inc.* 278 NLRB 376 (1986). Accordingly, I will not include them in the unit. *Continental Cablevision of St. Louis County, Inc.*, 298 NLRB 973 (1990); *Wilson Engraving*, *supra*. Cf. *Medlar Electric, Inc.*, 337 NLRB No. 133 (2002).

### *Eligibility of George Chase*

In making unit determinations, the Board weighs a variety of factors, including differences in employee interests and working conditions; wages and other compensation; different hours of work and benefits; separate supervision; degree of dissimilar qualifications, training and skills; differences in job functions; frequency of contact with other employees; work situs of the various classifications; degree of integration or interchange of work between classifications and the history of bargaining; and whether they are part of an integrated operation. *Overnite Transportation Company*, 322 NLRB 723, 724 (1996); *Esco Corp.*, 298 NLRB 837, 839 (1990); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). Chase's wages and benefits derive from the collective-bargaining agreement at Langhorne and are unlike those of the Aramingo facility employees. His duties differ markedly from the other Aramingo facility employees, and he is separately supervised. Unlike the other Aramingo facility employees, Chase works at Aramingo only 20 percent of the time, and there are weeks in which he does not work at Aramingo at all. Moreover, he is represented by another labor organization at a different location. *Davis Supermarkets, Inc.*, *supra*. In these circumstances, I will not include Chase in the unit.<sup>10</sup>

---

cases involved the question of whether an employer must apply a contract at one facility to another facility where employees from the first facility have been transferred. Here, while the Employer had plans for transferring employees from the Boulevard to Aramingo during 2001, the bankruptcy proceeding has altered those plans and the employees have not been transferred. Therefore, the issues the Board addressed in the cited cases have not arisen.

<sup>10</sup> As the Two-Facility employees are not in the unit, and the Intervenor has no other basis for participating in the election, the Petitioner will be the only labor organization listed on the ballot. Cf. *Southern Radio and Television Equipment Company, Television Station WTVJ*, 107 NLRB 216, 217 (1955).

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**All full time and regular part-time production and maintenance employees and truck drivers employed by the Employer at its Aramingo Avenue, Philadelphia, Pennsylvania facility excluding all office clerical employees, professional employees, watchmen, guards and supervisors as defined by the Act.**

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>11</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**SHOPMEN'S LOCAL UNION NO. 502 OF THE  
INTERNATIONAL – ASSOCIATION OF BRIDGE,  
STRUCTURAL, ORNAMENTAL AND REINFORCING  
IRON WORKERS, AFL-CIO**

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759

---

<sup>11</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

(1969). Accordingly, it is hereby directed that an election eligibility list, containing the *full* names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **September 30, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **October 7, 2002**.

Signed: September 23, 2002

at Philadelphia, PA

/s/

---

DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

347-4001-0000  
347-4050-1767  
362-6712-5000  
460-5067-4950

*lym:\H:\R04COM\Decision Writing\Metals DDE.doc*